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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

The Bell Operating Companies' Tariff  
for the 800 Service Management  
System, Tariff F.C.C. No. 1

and

800 Data Base Access Tariffs

Transmittal No. 1

CC Docket 93-129

OPPOSITION TO APPLICATION FOR REVIEW

MCI Telecommunications Corporation (MCI) respectfully requests that the Commission deny the Application for Review filed by GTE<sup>1/</sup> of the 800 Database Tariff Order in the proceeding below, which partially allows GTE's proposed 800 database access rate (to the extent that the rate does not exceed .67 cents) and suspends the remaining rate, subject to an accounting order, for the full statutory period.<sup>2/</sup>

GTE seeks review of the Bureau's decision, claiming that the Bureau prescribed a rate without a "full opportunity for a hearing," as is required by Section 205 of the Communications Act.<sup>3/</sup> GTE further asserts that the Bureau exceeded its "partial suspension" authority under Section 204(a) because the partial rate does not cover its proposed costs and the Bureau allegedly did not provide an opportunity for comment

<sup>1/</sup> The Application for Review was filed by GTE Service Corporation, on behalf of its affiliated GTE Telephone Operating Companies and GTE System Telephone Companies (hereinafter collectively referred to as "GTE").

<sup>2/</sup> In the Matter of the Bell Operating Companies' Tariff for the 800 Service Management System Tariff F.C.C. No. 1 and 800 Data Base Access Tariffs, Order, CC Docket 93-129, DA 93-491, released April 28, 1993 (800 Database Tariff Order).

<sup>3/</sup> GTE at iii, 3-6, 10.

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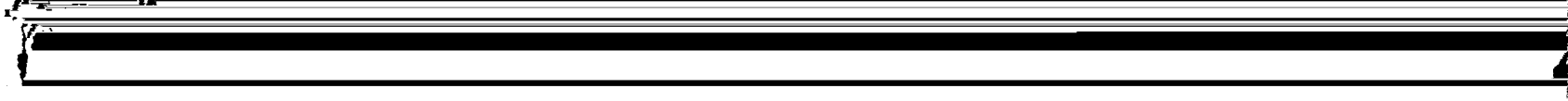


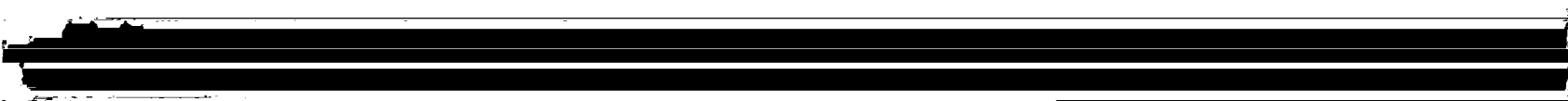
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GTE asserts that the Bureau has only two options - to suspend the tariff in its entirety for up to five months, pending an investigation, or to allow the entire tariff to take effect on schedule without suspension.<sup>5/</sup> GTE, therefore, insists that any suspension and investigation of a portion of a carrier's rates constitutes a rate prescription. This is simply untrue. In this instance, the Bureau relied on Section 204, which provides the Commission and the Bureau with broad authority to "suspend the operation of such charge, classification, regulation or practice, in whole or in part, but not for a longer period than five months beyond the time when it would otherwise go into effect."<sup>6/</sup> Partial rate authorizations like the one in the 800 Database Tariff Order are clearly permitted.<sup>7/</sup>

**GTE asserts:**

Prior to 1970, Section 204 provided the Commission with authority to

However, Section 204 was never intended to require that the Bureau "engage in a pointless charade in which carriers . . . are required to submit and resubmit tariffs until one finally goes below an undisclosed maximum point of reasonableness and is allowed to take effect."<sup>9/</sup> For example, in 1975, the Commission was investigating the proper prospective rate of return for AT&T. Using Section 204(a), it allowed AT&T to increase its rate of return and its rates only to the level of an approved interim rate of return, pending the investigation into the appropriate prospective rate of return.<sup>10/</sup> Thus, Section 204(a) provided the Commission with authority to allow into effect less than the



Moreover, we believe that the legislative history of Section 204(a) and its 1976 amendments is consistent with our interpretation of the statute.<sup>11/</sup>

Therefore, the partial authorization of GTE's proposed rates, subject to investigation of the remaining portion which appeared to be unreasonable, hardly amounts to a prescription of rates. The 800 Database Tariff Order should clearly be upheld.

GTE's claim that the Bureau failed to consider record evidence is equally unconvincing. The burden of supporting filed rates rests with the carrier filing the rates.<sup>12/</sup> Further, the Commission had previously only narrowly determined that it was appropriate to grant any exogenous treatment of costs whatsoever, as 800 database access is a restructured service.<sup>13/</sup> Thus, the Commission had warned the carriers that it would be conducting an even more strict review of the 800 database costs to assure that they were reasonable.<sup>14/</sup>

The other LECs' proposed tariff rates may also be overstated, as the Bureau decided that they raised substantial questions of lawfulness with respect to cost allocations and resulting rate levels.<sup>15/</sup> Without the requisite support from the LECs, the Bureau had no alternative but to suspend and investigate their rates.<sup>16/</sup> Although the

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<sup>11/</sup> Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, Memorandum Opinion and Order, CC Docket 88-136, 6 FCC Rcd. 4776, 4777 (1991) (Dark Fiber Order).

<sup>12/</sup> See, e.g., Investigation of Access and Divestiture Related Tariffs, CC Docket Nos. 78-72 and 83-1145, Memorandum Opinion and Order, FCC 84-201, released May 10, 1984, paras. 13-14, 54.

<sup>13/</sup> 800 Access Order at para. 26.

<sup>14/</sup> Id. at 27.

<sup>15/</sup> 800 Database Tariff Order at para. 16.

<sup>16/</sup> Id.

Bureau allowed many of the other, possibly overstated, rates to go into effect on one day's suspension, it determined that it needed to establish a bound of reasonableness on the amount that carriers could charge, in order to protect the interests of customers. Thus, the Bureau ordered the partial suspension of GTE's rates in the 800 Database Tariff Order based on the reasonable determination that the costs for 800 database should be similar for all carriers owning their own SCPs "since all LECs are deploying similar data base systems."<sup>17/</sup>

Using the mean rate as a benchmark, with a margin for error of one standard deviation, to evaluate LEC proposed rates was a logical method of assessing the preliminary reasonableness of GTE's proposed rate.<sup>18/</sup> The Commission has consistently and reasonably used statistical validation methods in the past for its Annual Access Filing review,<sup>19/</sup> and in partially allowing dark fiber rates to become effective.<sup>20/</sup>

GTE maintains that its own analysis of costs and demand indicate that GTE's proposed rate would be cost based.<sup>21/</sup> Thus, GTE assumes that the Commission must have ignored the evidence and erred in concluding that rates should be similar "since all LECs are deploying similar data base systems."<sup>22/</sup> However, GTE's analysis is self-

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<sup>17/</sup> Id. at para. 19.

<sup>18/</sup> Id.

<sup>19/</sup> See Annual 1988 Access Filings, 3 FCC Rcd. 1281 (1987), Annual 1989 Access Tariff Filings, 4 FCC Rcd 3638 (Com.Car. Bur. 1989).

<sup>20/</sup> Bell Atlantic Telephone Companies, et al., CC Docket No. 88-136, 6 FCC Rcd 1436 (Com. Car. Bur. 1991). This decision was affirmed by the Commission upon review. See, Dark Fiber Order.

<sup>21/</sup> GTE at 5-6.

<sup>22/</sup> GTE at 5.

serving and ignores the analysis conducted by several parties filing against GTE's rate.<sup>23/</sup> Thus, the Commission should not substitute GTE's preferred measurements and benchmarks to assess the reasonableness of its rates, and the Bureau's order cannot be considered "arbitrary" simply because it used one reasonable set of criteria for its preliminary review that is not preferred by the carriers that are identified as having filed excessive rates.

The Bureau has the prerogative of suspending rates in the interest of protecting ratepayers,<sup>24/</sup> and was clearly justified in doing so with respect to the portion of GTE's rate that did not appear reasonable. In fact, protecting the ratepayer from unreasonable rates may be even more crucial, in this instance, to facilitate fledgling competition in the 800 market. Thus, GTE's allegation that the Bureau failed to properly analyze its cost support and, thus, unreasonably suspended its 800 database query charge, is simply unfounded. To the contrary, based on the Bureau's preliminary analysis, a partial suspension was required to protect the public interest.

GTE also claims that the Commission exceeded its authority to partially suspend rates which, GTE alleges, Congress intended to apply only to rate changes for existing

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<sup>23/</sup> See, e.g., petitions filed by AT&T, Ad Hoc Telecommunications Users Committee, California

services.<sup>25/</sup> However, the Commission has previously upheld a partial suspension of rates for new services. In denying Applications for Review of the Bureau's partial suspension of carriers' dark fiber rates, the Commission held:

[W]e find nothing in the legislative history to indicate that the Commission's partial suspension authority is limited to existing services. Even assuming that dark fiber is not an existing service, the statute explicitly states that it applies to "new or revised" charges. . . .<sup>26/</sup>

The legislative language cited by GTE does nothing to bolster its position. Congress discusses tariff changes generally, without any distinction between implementing new rates or altering the rates for existing services.<sup>27/</sup> In any event, basic 800 access is a restructured service and, therefore, is, in effect, an increase to charges for existing services.<sup>28/</sup> Thus, GTE's arguments are unpersuasive.

It is ironic that GTE cites the legislative history of Section 204(b) in an effort to demonstrate the alleged limitations on the Commission's authority under Section 204. In fact, Section 204(b) was intended to increase, rather than decrease, the authority that

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<sup>25/</sup> GTE at 7-8.

<sup>26/</sup> Dark Fiber Order at 4777.

<sup>27/</sup> GTE cites language from a letter to Congress by Commission Chairman Wiley which refers to tariff changes. GTE at 7-8. The letter in no instance limits its discussion of "changes" to rates for existing

the Commission enjoyed under original Section 204 and allows for even greater flexibility.<sup>29/</sup> GTE asserts:

Even if this were a permissible partial suspension under Section 204(a), the Bureau's order is deficient for its failure to follow the procedures required for a partial suspension under Section 204(b). Section 204(b) provides that if the Commission is going to allow a portion of the rate filings to go into effect, it must first give the carriers and other interested parties the opportunity to address whether the partial authorization is "just and reasonable."<sup>30/</sup>

However, in contrast to Section 204(a), the procedures Congress contemplated in enacting Section 204(b) are much less rigorous and were designed to provide the Commission with greater, not less, flexibility in its consideration of proposed tariff revisions. Under Section 204(b), the Commission need not engage in hearings and need not make a formal "just and reasonable" determination to approve part of a carrier's tariff revisions, or to make part or all of them effective temporarily.<sup>31/</sup>

Thus, Congress and the courts have made it clear that the Commission is authorized under Section 204 to partially allow prospective rates, as the Bureau did in the 800 Database Tariff Order, and there is no evidence that the Commission has exceeded that authority.

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<sup>29/</sup> Section (b) added by Pub. L. 94-376, Section 2, 90 Stat. 1080. See 1976 U.S. Code Cong. and Adm. News, at 1926.

<sup>30/</sup> GTE at 9.

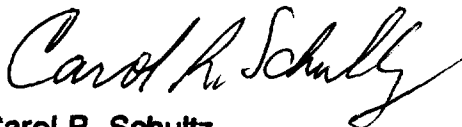
<sup>31/</sup> MCI Telecommunications Corp. v. FCC, 627 F. 2d 322, 334 (D.C. Cir. 1980).



## CONCLUSION

The Bureau acted reasonably and in the public interest by partially suspending GTE's apparently unreasonable 800 database query rate pending a full investigation. GTE has failed to demonstrate any need for the Commission to substitute GTE's review for the analysis conducted by the Bureau in the 800 Database Tariff Order. Thus, MCI respectfully requests that the Commission uphold the 800 Database Tariff Order, and deny GTE's Application for Review.

Respectfully Submitted,  
MCI TELECOMMUNICATIONS CORPORATION



Carol R. Schultz  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
(202) 887-3101

Its Attorney

Dated: June 7, 1993

**CERTIFICATE OF SERVICE**

I, Susan Travis, do hereby certify that copies of the foregoing MCI Opposition to Application for Review were sent via first class mail, postage paid, to the following on this 7th day of June, 1993:

  
SUSAN TRAVIS

\* Hand Delivered

Kathleen B. Levitz, Chief \*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

Gary Phillips \*  
Policy & Program Planning Division  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

ITS \*  
Federal Communications Commission  
1919 M Street, N.W., Suite 246  
Washington, D.C. 20554

Jay C. Keithley  
1850 M Street, N.W., Suite 1100  
Washington, D.C. 20036  
Attorney for United Telephone  
System Companies

Paul Rodgers  
General Counsel  
National Association of Regulatory  
Utility Commissioners  
1102 ICC Building  
P. O. Box 684  
Washington, D.C. 20044

Martin T. McCue  
Vice President & General Counsel  
U. S. Telephone Association  
900 19th Street, N.W., Suite 800  
Washington, D.C. 20006-2105

Danny E. Adams  
Howard D. Polsky  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
Attorneys for Telesphere  
Communications, Inc. and  
Competitive Telecommunications  
Association

L. Marie Guillory  
National Telephone Cooperative Assoc.  
2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

Durward D. Dupre  
Richard C. Hartgrove  
John Paul Walters, Jr.  
1010 Pine Street, Room 2114  
St. Louis, MO 63101  
Attorneys for Southwestern  
Bell Telephone Company

Patrick A. Lee  
David S. Torrey  
120 Bloomingdale Road  
White Plains, N.Y. 10605  
Attorneys for N. Y. Telephone  
Company and New England Telephone  
and Telegraph Company

James P. Tuthill  
Nancy C. Woolf  
140 New Montgomery Street, Room 1523  
San Francisco, CA 94105  
Attorneys for Pacific Bell  
and Nevada Bell

Stanley J. Moore  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
Attorney for Pacific Bell and  
Nevada Bell

John M. Goodman  
1710 H Street, N.W.  
Washington, D.C. 20006  
Attorney for the Bell Atlantic  
Telephone Companies

Shirley Ransom  
Helen A. Shockey  
1155 Peachtree Street, N.E.  
Suite 1800  
Atlanta, GA 30367-6000  
Attorneys for BellSouth Telephone Co.

Lawrence E. Sarjeant  
James T. Hannon  
1020 19th Street, N.W., Suite 700  
Washington, D.C. 20036  
Attorneys for U. S. West  
Communications, Inc.

Floyd S. Keene  
Mark R. Ortlieb  
Ameritech Services  
Legal Department  
2000 West American Center Drive  
Hoffman Estates, IL 60196-1025  
Attorneys for Ameritech  
Operating Companies

Francine J. Berry  
Mark C. Rosenblum  
Albert M. Lewis  
Rick D. Bailey  
295 N. Maple Avenue, Room 3244J1  
Basking Ridge, NJ 07920  
Attorneys for American  
Telephone and Telegraph Company

Genevieve Morelli  
General Counsel  
Competitive Telecommunications Assoc.  
1140 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Josephine S. Trubek, Esq.  
General Counsel  
Rochester Telephone Corporation  
Rochester Tel Center  
180 South Clinton Avenue  
Rochester, N. Y. 14646-0700

Craig T. Smith  
P. O. Box 11315  
Kansas City, MO 64112  
Attorney for the United  
Telephone System Companies

Daniel L. Bart  
Gail L. Polivy  
1850 M Street, N.W., Suite 1200  
Washington, D.C. 20036  
Attorneys for GTE Service Corp.  
and its domestic affiliated GTE  
Telephone Operating Companies

Ward W. Wueste, Jr.  
Richard McKenna  
P. O. Box 152092  
Mail Code HQE03J36  
Irving, TX 75015-2092  
Attorney for GTE Service Corp.  
and its domestic affiliated  
GTE Telephone Operating Companies

John N. Rose  
Organizaition for the Protection and  
Advancement of Small Telephone Companies  
2000 K Street, N. W., Suite 205  
Washington, D.C. 20006

Leon M. Kestenbaum  
Norina T. Moy  
Sprint Communications Company, L.P.  
1850 M Street, N.W., Suite 1110  
Washington, D.C. 20036

Carol F. Sulkes  
Central Telephone Company  
8745 Higgins Road  
Chicago, IL 60631

James S. Blaszk  
1301 K Street, N.W.  
Suite 900 - East Tower  
Washington, D.C. 20005  
Attorney for Ad Hoc Telecommunications  
Users Committee

Roy L. Morris  
Deputy General Counsel  
Allnet Communication Services  
1990 M Street, N.W., Suite 500  
Washington, D.C. 20036

Peter Arth, Jr.  
Edward W. O'Neill  
Ellen S. LeVine  
505 Van Ness Avenue  
San Francisco, CA 94102  
Attorneys for the People of the  
State of California and the  
Public Utilities Commission of  
the State of California

Richard J. Heitmann  
Associate General Counsel  
Metromedia Communications Corp.  
One Meadowlands Plaza  
East Rutherford, N.J. 07073

Joseph P. Markoski  
Squire, Sanders & Dempsey  
1201 Pennsylvania Avenue, N.W.  
P. O. Box 407  
Washington, D.C. 20044  
Attorney for Information Technology  
Association of America

Brian R. Moir  
Glenn S. Richards  
Fisher, Wayland, Cooper & Leader  
1255 23rd Street, N.W., Suite 800  
Washington, D.C. 20037-1170  
Attorneys for International  
Communications Association

John L. Barlett  
Robert J. Butler  
Kurt E. DeSoto  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
Attorneys for Aeronautical  
Radio, Inc.

Charles A. Tievsky  
Regulatory Attorney  
Cable & Wireless Communications, Inc.  
1919 Gallows Road  
Vienna, VA 22182

Catherine Reiss Sloan  
Vice President, Federal Affairs  
LDDS Communications, Inc.  
1825 Eye Street, N.W., Suite 400  
Washington, D.C. 20006

Brian Sulmonetti  
Director of Regulatory Affairs  
Advanced Telecommunications Corp.  
1515 South Federal Highway  
Boca Raton, FL 33432

Bob F. McCoy  
Joseph W. Miller  
P. O. Box 2400  
One Williams Center, Suite 3600  
Tulsa, OK 74102  
Attorneys for WiTel, Inc.

John F. Dodd  
Brad I. Pearson  
Smith, Gill, Fisher & Butts  
One Kansas City Place  
1200 Main Street, 35th Floor  
Kansas City, MO 64105-2152

Steven J. Hogan  
President & CEO  
LinkUSA Corporation  
230 Second Street, S.E.  
Cedar Rapids, IA 52401

Henry D. Levine, Esq.  
Morrison & Foerster  
2000 Pennsylvania, N.W., Suite 5500  
Washington, D.C. 20006

David R. Poe  
LeBoeuf, Lamb, Leiby & MacRae  
1875 Connecticut Avenue, N.W.  
Suite 1200  
Washington, D.C. 20009-5728

Alan Y. Nftalin  
Margot Smiley Humphrey  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Charles H. Helein  
Arter & Helein  
1801 K Street N.W., Suite 400K  
Washington, D.C. 20006

Randolph J. May  
Richard S. Whitt  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Ian Volner  
Venable, Baetjer, Howard and Civiletti  
1201 New York Avenue, N.W.  
Suite 1000  
Washington, D.C. 20005

Theodore D. Frank  
Vonya B. McCann  
Arent, Fox, Kintner, Plotkin & Kahn  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5339

Thomas E. Taylor  
Cincinnati Bell Telephone Company  
2500 Central Trust Center  
201 East Fifth Street  
Cincinnati, OH 45202

John Staurulakis  
6315 Seabrook Road  
Seabrook, N.D. 20706

Randall B. Lowe  
Thomas J. Beers  
Jones, Day, Reavis & Pogue  
1450 G Street, N.W.  
Washington, D.C. 20005-2088

C. Roger Hutton  
Texas Statewide Telephone Coop., Inc.  
2711 LBJ Freeway, Suite 560  
Dallas, TX 75234

Sue Blumenfeld  
Willkie, Farr & Gallagher  
Three Lafayette Centre  
1125 21st Street, N.W.  
Washington, D.C. 20036-3384

Sydney R. Peterson  
Niagara Telephone Company  
1141 Main Street  
Box 3  
Niagara, WI 54151

Alfred, Winchell, Whittaker  
Kirkland & Ellis  
655 Fifteenth Street, N. W.  
Suite 1200  
Washington, D.C. 20005